United States District Court,
C.D. California, Western Division.

ACCENTRA INC., et al,
Plaintiffs.
v.
STAPLES, INC., et al,
Defendants.

No. CV 07-05862 ABC (RZx)

Dec. 23, 2008.

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ORDER RE: CLAIM CONSTRUCTION

AUDREY B. COLLINS**, District Judge.**

I. INTRODUCTION

This case is about staplers. Plaintiffs Accentra, Inc. and WorkTools, Inc. (collectively "Accentra") have brought various claims against Defendants Staples, Inc. and Staples the Office Superstore, LLC, (collectively "Staples") for patent infringement, trademark infringement, violation of the Lanham Act, and unfair competition. Specifically, as relevant here, Accentra alleges that Staples is infringing four patents by making, using, and importing certain staplers. The patents at issue are U.S. Patent Nos. 7,080,768 (filed Aug. 23, 2004), 7,178,709 (filed Feb. 24, 2005), 7,234,621 (filed Dec. 15, 2005), 7,290,692 (filed Jan. 4, 2007) (the "'768," "'709," "'621," and "'692 Patents," respectively). The issue presently before the Court is the proper construction of disputed terms/limitations in the patents.

The Court has received the parties' Joint Claim Construction Statement ("Construction Statement") (Docket No. 49), and the parties' claim construction briefs. (Docket Nos. 57, 58, 68, 69.) In addition, the Court has had the benefit of the parties' in-court tutorial. (*See* Docket Nos. 67, 70.) After reviewing the material presented, the Court concluded that a hearing was not necessary. Ballard Medical Products v. Allegiance Healthcare Corp ., 268 F.3d 1352, 1358 (Fed.Cir.2001) ("[S]ome courts have found it useful to hold hearings and issue orders comprehensively construing the claims in issue. Such a procedure is not always

necessary, however.").

In the first section below the Court briefly discusses the legal standard. In the four sections thereafter, the Court addresses each patent, in turn, and the disputed language at issue.

II. LEGAL STANDARD

In Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed.Cir.1995) (en banc), aff'd, 116 S.Ct. 1384 (1996), the Federal Circuit held that claim construction is a matter of law to be decided by the court. "[T]he court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim." Id. at 979. Under Markman, a patent infringement analysis involves a two-part test: (1) a court must first construe the patent claims at issue, and (2) the trier of fact must determine whether the accused device or process infringes the patent. *See* id. at 976.

Claim construction begins first with the language of the claims. Usually, a court will give disputed terms their "ordinary and accustomed" meaning unless the patent and prosecution history reveal that the inventor has assigned an idiosyncratic meaning to the terms. *See* Phillips v. AWH Corp., 415 F.3d 1303, 1312-14 (Fed.Cir.2005). In determining the plain meaning of a claim, the court first looks to intrinsic evidence (e.g., the claims, the specification, and the prosecution history if in evidence). Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). If analysis of the intrinsic evidence does not resolve the ambiguity in the disputed claim terms, the Court may then receive extrinsic evidence, e.g., technical treatises and expert testimony, to determine the scope of the patented invention. Id. at 1583 ("In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence ."). The court may use extrinsic evidence " 'to aid the court in coming to a correct conclusion' as to the 'true meaning of the language employed' in the patent." Markman, 52 F.3d at 980. However, extrinsic evidence may only be used to help the court come to the proper understanding of the claims; it may not be used to vary or contradict the claim language. *See* Phillips, 415 F.3d at 1318-19. Though extrinsic evidence may assist the court in determining the legal meaning of claim terms, it should be accorded less weight than the applicable intrinsic evidence. *Id*.

III. THE '621 PATENT

The asserted claims in the '621 Patent are Claims 16, 20 and 23. (Accentra Mem. at 4.)

A. "A LOCK BAR HAVING A BLOCKING END AND A PROJECTING END "

The parties seek construction of "lock bar" in the phrase "lock bar having a blocking end and a projecting end" which is found in Claim Nos. 16 and 20. Accentra would construe a "lock bar" as:

a device which operates to impede or prevent action or progress of another structure.

(Accentra Mem. at 5.) Staples would construe a "lock bar" as:

a "bar" (a single contiguous piece of plastic, wood, metal, or other suitable material that is longer than it is wide or thick) that functions as a "lock"-i.e. that prevents the stapling mechanism from moving.

(Staples Mem. at 4.)

Although the Court does not construe "lock bar" exactly as presented by Staples, Staples has the more accurate construction. Accentra's construction greatly expands "bar" so that it is not constrained by any particular geometric qualifiers. These qualifiers are present throughout the various dictionary definitions for "bar"; alternative definitions from the dictionary used by Accentra describe a "bar" as "relatively long and straight" or a "solid oblong block" or "a rectangular block." (*See e.g.* Juo Decl. (Docket No. 57), Ex. G [The American Heritage Dictionary of the English Language (4th ed. 2000) ("Am. Heritage Dict.") excerpts].) Instead, Accentra's construction voids "bar" by simply calling it a "device" and ascribing a meaning redundant of "lock" in terms of a lock's obstructive aspects.

Accordingly, the Court construes "lock bar" to mean:

a relatively long, straight, rigid piece of material that stops the motion of a mechanism.

This comports not only with the dictionary definitions of the words "lock" and "bar" but also with what the item actually does, i.e., stop motion of the spring/hammer. FN1 (Juo Decl., Ex. G [Am. Heritage Dict. (defining lock as "[t]o fix in place so that movement or escape is impossible"; defining bar as "[a] relatively long, straight, rigid piece of material")].)

FN1. Furthermore, this construction comports with the description of the embodiments in the patent. ('621 Patent col.8 l.40-42 ("Lock bar 180a is preferably made from an elongated flat bar ...").)

Staples also asks the Court to construe "blocking end" and "projecting end." Staples defines "blocking end" as:

an extremity of the lock bar that obstructs the mechanism which ejects staples.

(Construction Statement, Ex. B at 7-8.) Staples defines "projecting end" as:

the extremity of the lock bar that sticks out from the housing. (Id.) Accentra states that construction of these terms is unnecessary. (Accentra Mem. at 5 n. 2.) However, Accentra does not state why construction is unnecessary and offers no competing construction. Accordingly, the Court will accept Staples' construction of these terms. FN2

FN2. Nor does the Court see how defining these terms will create confusion simply because the projecting end is not always sticking out from the housing. (Accentra Reply at 2 n. 2.) There is nothing confusing about a "projecting end" that, during the mechanical process, may be "pushed into the housing." (Id.)

B. "A SLOPED CAM SURFACE THEREBETWEEN "

The parties seek construction of "sloped cam surface" in the phrase "a lock bar having a blocking end and a projecting end with a sloped cam surface therebetween." ('621 Patent, Claim No. 20.) Accentra would construe "sloped cam surface" as:

an outer boundary of a device that produces variable or reciprocal motion using an incline relative to the orientation of the device.

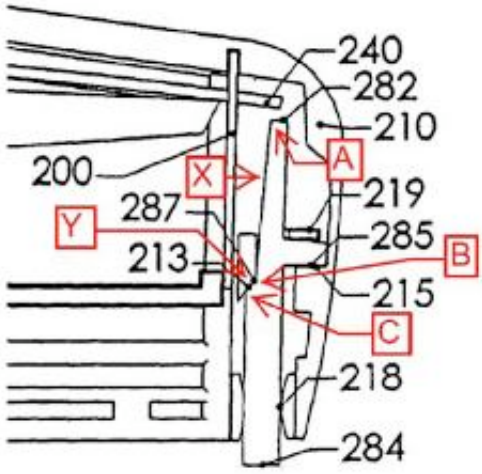
(Accentra Mem. at 6.) Staples would construe "sloped cam surface" as:

a structure that is positioned in-between the two extremities of the lock bar and that has a face that is neither horizontal or vertical with respect to the plane in which the striker moves.

(Staples Reply at 10.)

The main dispute is regarding what the slope is defined in reference to, i.e., you can only have a slope when something else is straight/flat. For Accentra, the slope is a slope relative to the orientation of the device. For Staples the slope is a slope relative to the striker. The Court finds neither approach accurate. The slope is in reference to the lock bar itself without reference to its orientation.

As noted above, the definitions for "bar" involve a "rectangle" or "block." Here the Court has construed the "lock bar" as "relatively straight." This is further evidenced by the figures of the "lock bar" in the patent.



For example, in the image above, taken from Figure 19 of the '621 Patent, the lock bar, akin to a rectangle or block, is composed of right angles except points "A," "B," and "C." As such, each surface of the lock bar is either horizontal or vertical except at points "X" and "Y." The divergence from right angles makes the surfaces at "X" and "Y" "sloped." This reading conforms to the definition of "slope": "To diverge from the horizontal or vertical; incline." (Second Cotta Decl. (Docket No. 68), Ex. C [Am. Heritage Dict. excerpts].)

Accordingly, the Court defines "a sloped cam surface therebetween" as:

an inclined outer boundary of the lock bar, located between the two extremities of the lock bar, capable of conveying motion by means of the incline.

(*See* Juo Decl., EX. G (Am. Heritage Dict. (defining "surface" as "The outer or the topmost boundary of an object."

The Court is not persuaded by Staples' argument that the "slope" can be negated simply by rotating the device so that, for instance, the surface at "X" is parallel to the horizon (and hence not a divergence, as specified in the definition for "slope"). (Staples Mem. at 10.) The Court views the device in its resting position, as portrayed in the figures and as defined in the claims. FN3

FN3. For instance, in Claim 1 the striker is defined as moving from "the upper position to the lower position," not from left to right, or vice versa. ('621 Patent, Claim 1.) Staples would apparently void such a construction because "upper" and "lower" would change-or disappear-depending on how one is holding the device. The Court declines to adopt such an extreme-and nonsensical-approach. The claims describe the device from static positions, not as if it were pivoting in space.

The Court is also not persuaded by Accentra's argument that the "sloped cam surface" does not have to be sloped at all. (Accentra Mem. at 7 n. 4.) In the phrase "with a sloped cam surface therebetween" the Court does not see how the surface can be anything but sloped. Even if "sloped" modifies "cam," "cam" itself modifies surface. As far as the Court can tell, Accentra attempts to read "with a sloped cam surface" as "with a surface for a sloped cam." This however, is not how the claim was written.

As to the "cam," Accentra would have the Court use the normal dictionary definition. However, as noted by Staples, that definition is only applicable if it is heavily edited. (Staples Reply at 10 ("Plaintiffs thus edit their inapposite dictionary definition as follows: used to produce a variable or reciprocating motion (alterations in original); Accentra Mem. at 6-7 (limiting construction of "cam" to "used to produce variable or reciprocating motion").) Instead of adopting Accentra's contorted definition the Court adopts the definitions from the technical dictionaries provided by Staples. (Second Cotta Decl., Ex. C [excerpts from *McGraw-Hill's Dictionary of Scientific and Technical Terms* (6th ed.2003)(defining "cam" as "A plate or cylinder which communicates motion to a follower by means of its edge or a groove cut in its surface."); Dictionary of Engineering (2d ed. McGraw Hill 2003) (same).) Here, the lock bar communicates motion by means of its slope.

C. "A SLOPED CAM GUIDE DISPOSED ON THE HOUSING "

The parties seek construction of "sloped cam guide" in the phrase "a sloped cam guide disposed on the housing and slidably engaging the sloped cam surface of the lock bar." ('621 Patent, Claim 20.) Largely incorporating its construction of "sloped cam surface," Accentra would construe "sloped cam guide" as:

a structure that acts to regulate the motion or operation of a device that produces variable or reciprocal motion using an incline relative to the orientation of the device.

(Accentra Mem. at 7.) Staples would construe the phrase as:

a structure that is positioned on the housing of the stapler and that has a face that is neither horizontal or vertical with respect to the plane in which the striker moves.

(Claim Construction, Ex. B at 11.)

Encompassing the Court's definition of "sloped cam surface" above, the Court defines "sloped cam guide" as:

a structure that regulates the motion of a sloped cam surface via an incline.

The parties dispute whether, in Figure 19 (partially reproduced above) the "sloped cam guide" abuts the lock bar at "Y" or whether the "sloped cam guide" could be the item(s) at "218." The definitions established above, in conjunction with Claim 20, require that the "sloped cam surface"-which is undoubtedly sloped-engage the sloped cam guide. The lock bar has no sloped surface engaging the guides at "218."

D. BIASING MEANS

"Biasing means" appears in Claims 16 and 20. The parties agree that "biasing means" is a means-plus-function limitation under 35 U.S.C. s. 112 para. 6. (Accentra Mem. at 8; Staples Mem. at 7.) "Claim construction of a means-plus-function limitation includes two steps. First, the court must determine the claimed function. JVW Enters. v. Interact Accessories, Inc., 424 F.3d 1324, 1330 (Fed.Cir.2005). Second, the court must identify the corresponding structure in the written description of the patent that performs that function." Applied Medical Resources Corp. v. U.S. Surgical Corp., 448 F.3d 1324, 1332 (Fed.Cir.2006).

1. "A BIASING MEANS URGING THE BLOCKING END OF THE LOCK BAR INTO ENGAGING THE POWER SPRING OPPOSING THE BIAS ON THE STRIKER"

a. The Function

Accentra would limit the relevant function to a "biasing means" and construe the function as:

biasing the lock bar.

(Accentra Mem. at 9.) Accentra's approach, in essence, reads out any specificity as to the claimed function-which is clearly delineated in the claim, i.e., a means that urges the blocking end.... FN4 Staples argues that the relevant function is:

FN4. Accentra's construction is almost circular. A "biasing means" is something that "biases the lock bar."

to push this blocking end of the lock bar into a position where it (1) engages the power spring and (2) opposes the bias on the striker.
(Staples Mem. at 7.)
The Court finds that Staples construction is more appropriate and, adopting much of that construction, the Court determines that the function of the biasing means is:

to push the blocking end of the lock bar so that it secures the power spring and resists the influence exerted on the striker.FN5

FN5. One could read "the power spring opposing the bias on the striker" such that "opposing the bias" modifies power spring. However, the claim only identifies one power spring which, itself, biases the striker into the fastener. ('621 Patent, Claim 16 ("a power spring biasing the striker into the fastener").) Accordingly, there is nothing in the claim that would allow the power spring to both bias the striker and oppose the bias on the striker. As such, "opposing the bias on the striker" must refer not to the power spring, but the lock bar. The lock bar is thus positioned so that it opposes the bias on the striker.

This construction does not specifically address the main point of contention as to the biasing means: the direction of the bias on the striker. Staples would limit the bias on the striker in this phrase to a bias toward a staple, i.e., downward. (Staples Mem. at 7-8.) The Court does not find that further clarification is necessary in deconstructing the phrase at issue; the Court has construed the language presented and need go no further.

B. The Structure

The parties agree that the structure is "a spring, piece of rubber or resilient material, and equivalents of each." (Accentra Mem. at 10; Construction Statement, Ex. B. at 9.) The parties disagree, however, as to whether the location for the biasing means must be specified.

Staples, who seeks to impose a location restriction, notes that "there is no separate limitation speaking to the position of the biasing means." (Staples Reply Mem. at 9.) However, Staples argues, when one examines the specification, the biasing means is positioned between the housing and the lock bar. (Staples Mem. at 9 .) To an extent, Staples is correct. (*See* '621 Patent fig. 11-18 (item 119); *e.g.* id. col.11 l.32-44.)

However, the biasing means may also be part of the housing, and, as such, is not "between" the housing and the lock bar. ('621 Patent col.11 l.40-44 ("Elongated spring 119 may be an extended element of body 110.... Otherwise, elongated spring 119 may be a discrete component attached to the body.").) FN6 Accordingly, the Court declines to construe the biasing means as "between the housing and the lock bar."

FN6. Furthermore, Staples only cites one case for the proposition that the Court should construe the position of the structure in a means-plus-function claim when the specification only portrays the structure in one location. (Staples Reply at 8 (citing Kudlacek v. DBC, Inc., 2001 WL 1646654, 25 Fed. Appx. 837, 842 (Fed.Cir.2001).) *Kudlacek* does not necessarily support Staples's position. In Kudlacek the district court properly construed the relevant structure based on the patent's disclosure of only one such structure fitting the claim. Kudlacek, 25 Fed. Appx. at 843. However, although harmless error, the district court improperly construed the position and orientation of the structure when the means-plus-function language contained no such specification. Kudlacek, 25 Fed. Appx. at 844 ("the position and orientation of the set screw and pad assembly is not properly viewed as part of the structure corresponding to the 'resilient securing means' limitation").

2. "A BIASING MEANS URGING THE PROJECTING END OF THE LOCK BAR TO EXTEND FROM A BOTTOM OF THE HOUSING AND INTO OBSTRUCTING THE BIAS OF THE POWER SPRING"

This clause from Claim 20 is similar to the clause in Claim 16, discussed immediately above. Not surprisingly, the parties take the same position as to this clause. (*See* Accentra Mem. at 9-10; Staples Mem. at 7-9.) The Court will, likewise, construe the clause in Claim 20 consistent with the construction in Claim 16. Accordingly, the Court determines the function of the biasing means is:

to push the projecting end of the lock bar out from the bottom of the housing and into a position so that it resists the influence of the power spring.

The structure is: a spring, piece of rubber or resilient material, and equivalents of each. (*See* Accentra Mem. at 10; *see also* Claim Construction, Ex. B. at 9.)

E. "A POWER SPRING BIASING THE STRIKER INTO THE FASTENER "

The parties ask the Court to construe the phrase "a power spring biasing the striker into the fastener." This phrase appears in both Claim 16 and Claim 20. Accentra offers the same construction for each claim, as does Staples. In addition, both parties use the same definition for "bias"-"to influence in a particular ... direction." (Accentra Mem. at 11 (quoting Am. Heritage Dict.); Staples Mem. at 7 (same).)

Accentra does not think that construction is necessary but argues, if the Court does construe the phrase, it should mean:

the spring influences the striker in a particular direction to eject the fastener.

(Accentra Mem. at 11.) Staples offers the following construction:

the power spring pushes the striker in the direction of the fastener as the power spring attempts to regain its original shape.

(Staples Mem. at 7.) The main difference and point of contention in the two constructions is the presence-or lack thereof-of a specific directional component.FN7

FN7. The Court does not find it necessary to delve into arguments over whether the power spring is required to be regaining its original shape. Staples argues that references to the bias of the power spring in the specification always refer to "the urge of the power spring to regain its original shape after it has been compressed or extended." (Staples Mem. at 6.) The Court does not read the same import into these references. It is no surprise that when the patent specification describes the spring, the spring is referred to when it is attempting to regain its original shape. If this where not so, the embodiment, and device, wouldn't use a spring at all. In the clause at issue, the focus is on "biasing *the striker* "-the force exerted on the striker-not the internal conflict of the spring.

On reviewing the phrase at issue, the only directional component present is in biasing the striker "into" the fastener. Accordingly, the Court construes the phrase as:

a power spring influences the striker so that the striker goes toward the fastener.

This construction applies equally to both Claims 16 and 20.

F. "ENABLING THE POWER SPRING TO BIAS THE STRIKER INTO THE FASTENER(S) "

This phrase, like the previous, appears in both Claims 16 and 20.FN8 Accentra again argues no construction is necessary, stating that the Court should apply the ordinary meaning of the term "bias." (Accentra Mem. at 12.) As such, Accentra would apparently construe the language as:

FN8. Claim 16 refers to "the fastener" (singular) while Claim 20 refers to "the fasteners" (plural). This distinction does not alter the Court's, or the parties', uniform construction of the clauses.

enabling the power spring to influence the striker into the fastener.
(*See* Accentra Mem. at 12.) Staples offers the following construction:
moving the lock bar out of contact with the power spring allows the power spring to push the striker into the fastener.

(Staples Reply Mem. at 9.) FN9
FN9. Staples' construction encompasses language-about moving the blocking end of the lock bar out of the way of the power spring-that precedes the specific phrase at issue. (*See* '621 Patent, Claim 16 ("wherein the projecting end of the lock bar is pushed into the housing by the working surface which moves the blocking end out of engagement with the power spring, enabling the power spring to bias the striker into the fastener"); id. Claim 20 ("wherein the projecting end of the lock bar is pushed into the housing by the working surface against the biasing means, and which slides the cam surface of the lock bar against the cam guide to move the blocking end away from the power spring, enabling the power spring to bias the striker into the fasteners.").)

The Court construes the clause as follows:

allowing the power spring to influence the striker so that the striker goes toward the fasteners.

This construction largely comports with that offered by the parties. Although Accentra is fearful that Staples' construction might "exclude preferred low-start embodiments of the invention" (Accentra Reply at 9), Accentra does not explain how this would be so. As far as the Court can tell, there seems little disagreement between the parties as to the meaning of this clause.

IV. THE '692 PATENT

Claims 6, 7 and 9 are the asserted claims for the '692 Patent. (Accentra Mem. at 14.)

A. "*A BIASING MEANS BIASING THE LOCKING MEANS* "

1. FUNCTION

The parties seek construction of "biasing means" in Claim 6 and agree that it is a means-plus-function element under 35 U.S.C. s. 112. (Accentra Mem. at 14; Staples Mem. at 12.) Accentra would construe the function as:

biasing the locking means.

(Accentra Mem. at 14.) Staples agrees that "the function of the biasing means [is]: 'biasing the locking means.' " (Staples Mem. at 12.) But, Staples goes on to construe "biasing the locking means":

as pushing the locking means so that one end interferes with the power spring, striker, or handle and the other end sticks out of the housing. FN10

FN10. The construction Staples presents in its briefing sometimes varies slightly with that presented in the

Joint Claim Statement. For instance, here, according to Staples, the biasing means functions where one ends "sticks **out of the housing,**" per the memo, but "sticks out **beyond the lower boundary of the housing**" per the Joint Claim Statement. (Staples Mem. at 12 (emphasis added); Claim Construction, Ex. B at 14 (emphasis added).) The Court does not find this, and similar discrepancies, to be substantive.

(Staples Mem. at 12.)

The Court construes the function as:

biasing the locking means.

As to Staples additional description, the Court does not find it is necessary given that both "bias" and "locking means" are addressed separately herein.

2. STRUCTURE

Accentra argues that the structure is the same as the biasing means in the ' 621 Patent:

a spring, piece of rubber or resilient material, and equivalents of each.

(Accentra Mem. at 14.) Staples likewise views the structure as the same as in the '621 Patent, but would, as with its construction of the '621 Patent, impose a location requirement putting the structure between the housing and the lock bar/means. (Staples Mem. at 13.)

The Court's analyses as to the '621 patent applies equally here. The specification does not limit the structure to a discrete item located between the housing and the lock bar/means. ('692 Patent col.11 l.9-13 ("spring 119 may be an extended element of body 110"); id. at 5:45-58 (describing "bias spring" as part of "button bar" locking mechanism).)

B. "LOCKING MEANS "

1. FUNCTION

The parties ask the Court to construe "locking means" which is used in Claims 6 and 7 and which, the parties agree, is a means-plus-function element. FN11 (Accentra Mem. at 14; Staples Mem. at 11.) Accentra would construe the function as:

FN11. The relevant language from Claims 6 and 7 is as follows: "a locking means ... that is biased to advance into at least one of the power spring, striker, and handle to [prevent/block] at least one of the power spring, striker, and handle respectively from moving to complete a cycle to eject the fasteners from the guide track...." ('692 Patent, Claims 6, 7.)

locking or interfering with at spring, striker, or handle. least one of the power spring, striker, or handle. (Accentra Mem. at 14.) Staples argues that the function is:
to interfere with the power spring, striker or handle in such a way as to prevent the stapling mechanism from moving to eject staples.

(Staples Mem. at 11-12.)
The Court construes the function as:

locking or interfering with at least one of the power spring, striker, and handle to prevent or block at least one of the power spring, striker, and handle respectively from moving to complete a cycle.

This comports with-and indeed incorporates-the actual function as set forth in the patent, instead of Staples' less than exact characterization of that function. The Court also declines to include the "to eject fasteners from the guide tack" portion as that function is technically not a function of the locking means, but the function of a complete cycle and the device as a whole.

2. STRUCTURE

Accentra claims the structure for the "locking means" is:

a rotating action lock (*See* elements 70 and 306 in Figures 1, 2, 4, and 5-9); a pivoting action lock (*See* element 180a in Figures 11-13, and element 180b in Figures 14-18); or a cam action lock (*See* element 280 in Figures 19-20), and equivalents of each.

(Accentra Mem. at 14-15.) Staples argues that "[b]oth parties cite to the same structure in the specification" with the difference being that "Plaintiffs' construction also includes labels." (Staples Mem. at 12.)

The Court agrees with Staples that the labels do not appropriately-or specifically-identify the relevant structures. However, because, according to Staples, the "parties cite to the same structure in the specification," the Court shall adopt the structures identified:

a safety hook (structure 70 in Figures 1, 2, 4, and 5-9), a sensing end of a button bar (structure 306 in Figures 1, 2, 4 and 5-9), a bottom pivoting lock bar (180a in Figures 11-13); a pivoting lock bar (180b in Figures 14-18); a lock bar that undergoes a cam action (structure 280 in Figures 19-20). FN12

FN12. Staples omits structure 306 when it identifies the corresponding structure. (*See* Construction Statement, Ex. B at 13.) However, as noted, Staples confirms that the parties are in agreement. (Staples Mem. at 12 ("Both parties cite to the same structure in the specification....").)

Here the Court adopts the structures identified by the parties in the figures but, unlike the parties, uses the corresponding description of the relevant structure in the specification. ('692 Patent col.4 l.64-54 (identifying structure 70 as "safety hook"; id. col.5 l.59-61 (identifying structure 306 as the "[s]ensing end" of the "button bar"); id. col.7 l.61 (identifying structure 180a as a "bottom pivoting lock bar"); id. col.9 l.23 (identifying structure 180b as a "pivoting lock bar"); id. col.11 l.23-24 (identifying structure 280 as a "[l]ock bar" that "undergoes a cam action.").)

Accentra also requested identification of the alternative embodiment of the button bar wherein "the button bar may be a straight pin." ('692 Patent col.7 l.31-33; Accentra Reply Mem. at 12.) The Court does not find it necessary to identify this alternative which, as noted, is for the button bar. The button bar is not specifically identified as the relevant structure; it is only the sensing end of a button bar that is identified.

Accordingly, it is not necessary to determine whether the button bar is a straight pin, or otherwise, in identifying the structure for the "locking means."

C. "THE HANDLE LINKED TO THE POWER SPRING "

This clause is found in both Claims 6 and 7. The specific dispute is over the term "linked." Accentra argues that no construction is necessary, but that a proper construction would be limited to the terms' "ordinary meaning" which, according to Accentra, is:

to become connected with or as if with a link.

(Accentra Mem. at 16.) By Accentra's account, this "encompasses both direct and indirect connections." (Accentra Mem. at 16.) In contrast, Staples construes "linked" as:

directly coupled, joined or attached.

(Construction Statement, Ex. B at 12.)

The Court agrees with Accentra; "linked" as used in the claims is not limited to a direct link. The specification, at one point, notes that "an engaging end of lock bar 180B could directly link to striker 100." ('692 Patent col.10 l.65-col.11 l.1.) The modifier "directly" indicates that "link" without further specification, could include indirect links. *See* Phillips, 415 F.3d at 1314 ("To take a simple example, the claim in this case refers to 'steel baffles,' which strongly implies that the term 'baffles' does not inherently mean objects made of steel."). Furthermore, the specification notes that there can be "**one or more components** linking handle 120 to stapler-actuating arm 140." FN13 ('692 Patent at col.10 l.48-51 (emphasis added).) Accordingly the Court construes "linked" to mean:

FN13. The specification defines "actuating arm 140" as a power spring: "In FIG. 16, stapler-actuating arm/power spring 140 stores energy...." ('692 Patent col.10 l.22-23.)

to connect with or as if with a link.
This is the definition found in the American Heritage Dictionary. (Second Cotta Decl., Ex. C.)

D. "A POWER SPRING DISPOSED IN THE BODY, BIASING THE STRIKER TOWARD ..."

This clause is found in Claim 6 where the spring is "biasing the striker toward a fastener exit area at the bottom of the body." ('692 Patent, Claim 6.) It is also found in Claim 7 where the spring is "biasing the striker toward a bottom of the body." ('692 Patent, Claim 7.) Accentra argues that no construction is necessary, but that a proper construction for "biasing" would be as previously argued:

to influence in a particular direction.

(Accentra Mem. at 17.) Staples, not surprisingly, argues for the same construction of "biasing the striker" that it sought for the similar phrase in the '621 Patent FN14:

FN14. The '621 patent concerned "a power spring biasing the striker into the fastener." (*See* discussion above.)

the power spring pushes or exerts pressure on the striker in the direction of the fastener as it attempts to regain its original shape
(Claim Construction, Ex. B. at 12.)
Just as the parties adopt their previous constructions, so too does the Court adopt its previous construction. As discussed above, the Court declines to read into the claim the physics of the spring or a directional component that is not there. Here the only directional component is "toward" a "fastener exit area" or "a bottom of the body." Accordingly, "biasing the striker toward ..." means:

influence the striker so that the striker goes toward a fastener exit area at the bottom of the body (Claim 6) or toward a bottom of the body (Claim 7).

V. THE '768 PATENT

The only asserted claims in the '768 Patent are Claims 20 and 21. (Accentra Mem. at 17.)

A. "WHEREIN THE BASE SIDEWALLS SURROUND THE TRACK PULL IN THE CLOSED STAPLER POSITION "

This clause is found in Claim 20 and the focus of the parties' dispute is on the term "surround." Accentra would construe "surround" as:

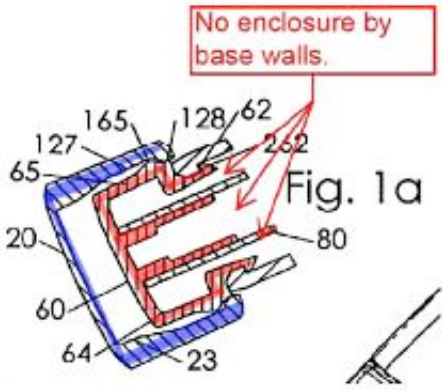
to confine so as to bar escape.

(Accentra Mem. at 17.) Staples would construe "surround" as:

enclose to prevent contact from the outside.

(*See* Staples Mem. at 25; *see also* Construction Statement, Ex. B at 16.) Staples also seems to argue that the track pull must be enclosed by the sidewalls on all sides. (Staples Reply at 22.)

None of the embodiments show that the walls of the base enclose the track pull on all sides. As shown in the figure below, the base walls (shaded in blue), in cross-section view, clearly do not enclose the track pull (shaded in red) on one side.



Accordingly, the Court does not see how surround as used in the claim could mean to enclose **on all sides.** In addition, none of the definitions cited by Staples use the word "contact." (Construction Statement, Ex. B at 16.) Furthermore, the embodiment at Figure 7 clearly shows that the track pull is not enclosed to prevent "contact" from the outside. ('768 Patent fig.7, item 60.)

The Court finds that Accentra has the more accurate construction and construes "surround" as follows:

to enclose or confine so as to bar escape.

This comports with the dictionary definition-minus the "all sides" component. (*See* Juo Decl., Ex. G (Am. Heritage Dict.).)

B. "PARTIALLY EXPOSED "

This term is found in dependent Claim 21, which reads: "The stapler of claim 20, wherein a track chamber is at least partially exposed when the track assembly is moved rearward." ('768 Patent, Claim 21.) Accentra would construe "partially exposed" to mean:

partially allowed to be subjected to an action, influence or condition.

(Accentra Mem. at 18.) Staples construes "partially exposed" to mean:

to some degree, but not fully, open to the outside.

(Staples Mem. at 25.)

The parties here each rely on a different entry from the dictionary for "expose." Accentra relies on: "To subject or allow to be subjected to an action, influence, or condition." (Juo Decl., Ex. G (Am. Heritage Dict.).) Staples relies on: "To deprive of shelter or protection; lay open to danger or harm." (Id.)

The Court finds Accentra's definition more appropriate. It appears that the only purpose in exposing the track chamber is to load staples or clear a staple jam. (*See* '768 Patent col.1 l.59-62 (noting exposure of chamber to load staples in "traditional staple track chamber" in a patent (U.S.Patent.No.4,666,075) discussed in the "Background of the Inventions"); id. col.8 l.37-61 (describing treatment of a staple jam and processes of

loading staples).) Although the "track assembly," when inside the track chamber, prevents access to the chamber, the function of the track assembly is to position staples over the anvil-not to shelter or protect. (*See* '768 Patent col.5 l.67-col.6 l.23.) Accordingly, the dictionary entry selected by Accentra is more appropriate and the Court construes "partially exposed" as:

subject to action to a degree.

This relies on the dictionary definition of "expose," as discussed above, and the definition of "partially." (Second Cotta Decl., Ex. C (Am. Heritage Dict. (defining "partially" as "To a degree, not totally").) The Court is not persuaded by Staples' argument that "a track chamber cannot be partially subjected to the action of loading staples. Either one can load staples, or one cannot." (Staples Reply at 23-24.) The item subject to action, and the subject of the clause, is the track chamber-not a staple or staples. It is completely possible to only partially load the stapler, i.e., to not put in the maximum number of staples that will fit in the chamber.

C. "MOVABLE TO EXTEND REARWARD FROM THE BODY IN THE OPEN POSITION OF THE STAPLER SO THAT THE TRACK PULL EXTENDS BEYOND THE BASE SIDEWALLS TO BE EXPOSED OUTSIDE THE BASE SIDEWALLS "

This clause is found in Claim 20. Accentra states that no construction is needed, but argues that of any possible construction, "movable" should mean:

possible to move.

(Accentra Mem. at 19.) Staples argues that "movable" means:

automatically changes position.

(Staples Reply at 20; *see* Staples Mem. at 23 ("automatically eject").)

Accentra's construction relies on the dictionary definition of movable. (Juo Decl., Ex. G (Am. Heritage Dict. (defining "movable" as "Possible to move").) The dictionary definition does not refer to anything automatic or anything ejecting, as Staples construes the word. Indeed, Staples' construction is divorced from the dictionary definition and instead derives from the patent specification. Because the specification consistently refers to an "automatic opening" feature, movable must, according to Staples, refer to an automatic movement.

Staples is correct that the disclosed invention clearly encompasses an automatic opening feature. ('768 Patent col.1 l.40-42 ("A further improvement for the present invention is an automatic opening mechanism for the staple loading track."); id. col.2 l.31-32 ("For the staple loading operation, the present invention provides an automatic track opening feature.").) However, the Court does not find that Claim 20 exclusively identifies this automatic feature. The Court reaches this conclusion because the patent clearly discloses when the relevant movement is meant to be automatic.

Compare a similar clause in Claim 15 to the clause at issue in Claim 20:

Claim 15	Claim 20
a track assembly slidably fitted to a bottom of the body,	wherein the track assembly is slidably fitted to

wherein in the stapler closed position the base confines the track assembly to be immediately adjacent the striker, and wherein in the intermediate stapler position the track assembly **is moved** rearward away from the striker so that the track assembly extends rearward from the body and is at least partially exposed.

the body having an inward track position with the track assembly under the body, and **movable** to extend rearward from the body in the open position of the stapler so that the track pull extends beyond the base sidewalls to be exposed outside the base sidewalls.

('768 Patent Claims, 15, 20 (emphasis added).) In Claim 15, when the stapler body is pivoted away from the base, "the track assembly **is moved** rearward." (Id. Claim 15 (emphasis added).) The movement is automatic upon pivoting the body away from the base. (Id. (describing "an intermediate stapler position wherein the body is pivoted away from the base").) In comparison, Claim 20 uses the passive "movable."

Accordingly, the Court declines to adopt Staples' approach; "movable" does not require automatic ejection. However, given Accentra's position that no construction is necessary, the Court will go no further in analyzing the disputed language.

VI. THE '709 PATENT

Claims 24, 25, 27 and 28 are the asserted claims in the '709 Patent. (Accentra Mem. at 19.)

A. "***REST POSITION*** "

This term is in Claims 24 and 27. Accentra would construe it as:

the position of the handle wherein the handle is at a farthest position away from the base before the power spring is deflected.

(Accentra Mem. at 20.) Accentra seeks to link "rest position" to the state of the power spring. (Accentra Mem. at 20 ("the claimed 'rest position' is defined in part by the internal power spring").) Staples does not think that any reference to the spring is necessary and that the "rest position" is:

the position the handle naturally assumes before any force is applied to the handle.

(Staples Mem. at 15.) Staples seeks to define rest position temporally, i.e., the position before force is applied. The Court finds both constructions contain more verbiage than necessary.

As stated in Claim 24: "**in the closed stapler position,** the handle has a rest position wherein the handle is moved to a farthest position away from the base, and the handle has a pre-release position wherein the handle is moved toward the base." ('709 Patent, Claim 24 (emphasis added).) Claim 27 has similar language, but does not necessarily link the "rest position" to the "closed stapler position." ('709 Patent, Claim 27 ("the stapler having a closed stapler position wherein the body extends forward from the pivotal attachment in a substantially parallel relationship above the base, and the handle has a rest position wherein the handle is moved to a farthest position away from the base").) Accordingly, the Court construes handle rest position as the position where:

the handle, while the stapler is in the closed position, is moved to a farthest position away from the base (Claim 24); or the handle is moved to a farthest position away from the base (Claim 27).

This comports with the specific language in the patent and avoids unnecessary additions regarding the power spring or where one is in the stapling process.

B. "PRE-RELEASE POSITION "

This term appears in Claims 24 and 27. Both of these are independent claims. Accentra would construe the term as:

the position of the handle wherein the power spring causes the striker under bias from the power spring to eject a staple out of a staple loading chamber.

(Accentra Mem. at 20.)

Staples argues that the claim is indefinite. (Staples Mem. at 17 .) Staples argues that "the handle travels through multiple positions before the striker is let go." (Staples Mem. at 17.) Staples finds "multiple positions" because other claims in the patent-Claims 6, 7 and 11-reference "pre-release positions" (plural). Hence, Staples contends that because there are multiple positions, "[i]t is not clear which of the possible pre-release positions constitutes **the** pre-release position." (Staples Mem. at 17 (emphasis in original).) The Court is not persuaded by this argument. Claims 24 and 27 are both independent claims. Simply because other claims reference "pre-release positions" (plural) does not change that the independent claims at issue here consistently use the singular. As far as the handle is concerned in Claims 24 and 27, the pre-release position is clearly delineated: "at the pre-release position of the handle, the striker under bias from the power spring ejects a staple out of a staple loading chamber." ('709 Patent, Claims 24, 27.) The Court does not find that the term suffers from indefiniteness.

Separate from the multiplicity issue, the Court must make a clarification as to the term "pre-release position." According to Staples, "release" "refers to letting go of the striker." (Staples Mem. at 17.) Thus, Staples argues, " 'pre-release' means before the striker is let go." (Staples Mem. at 17.) However, this is not necessarily correct. The claim states that "at the pre-release position of the handle, the striker under bias from the power spring ejects a staple out of a staple loading chamber." ('709 Patent, Claim 24.) "Pre-release" in this clause cannot denote a time **before** the striker is let go because **at the pre-release position,** the striker actually is let go. It appears to the Court that the item not yet released-in the referenced state of pre-release-is actually the handle, not the striker. Indeed, Claims 24 and 27 delineate when the "pre-release position" is related to the handle or the striker. (*See* '709 Patent, Claim 24 ("the handle has a pre-release position"); id., Claim 27 ("the striker includes a pre-release position").) FN15 Accentra appears to make the same error, i.e., assuming pre-release refers only to release of the striker.

FN15. When one differentiates between a pre-release position of the handle and a pre-release position of the striker, Staples' argument that the measurements in Claims 25 and 27 are "physically impossible" (Staples Reply at 18) fails. The measurements relate to the distance between the striker pre-release position and its lowered position, but Staples incorrectly assumes the reference is to pre-release of the handle.

Accordingly, the Court declines to further construe "pre-release" at this time (assuming, at this juncture, additional construction is needed at all) given that the parties' briefing does not adequately address the varied use of the term in Claims 24 and 27.

C. "PRESSING AREA "

This term appears in Claims 24 and 27. The full clause where the term is first cited in each claim is: "a body with a handle pivotably attached to the body, the handle including a pressing area near a front end of the handle." ('709 Patent, Claims 24, 27.) Accentra would construe "pressing area" as:

a roughly bounded part of the surface near the front end of the handle which a user moves by applying pressure.

(Accentra Mem. at 21.) Staples argues that the term is indefinite. (Staples Mem. at 14-15.) Staples bases this argument on two general assertions: 1. the term does not "precisely identify where along the top surface of the handle the pressing area is located or how large an area it encompasses"; and 2. the subsequent handle distance measurements in the two claims cannot be determined unless the pressing area is precisely identified. (Staples Mem. at 14.)

The Court does not find the term indefinite, but finds that, by the language in the claims, the area is circumscribed. Beginning with the dictionary, "area" means "[a] roughly bounded part of the space on a surface" and "pressing" means "to exert steady weight of force against; bear down on." (Juo Decl., Ex. G (Am. Heritage Dict.).) FN16 Accordingly, a "pressing area" would be "a roughly bounded part of the space on the surface against which force is exerted."

FN16. The Court uses the definition for "press" in its transitive verb form. (Juo Decl., Ex. G (Am. Heritage Dictionary).)

The pressing area is further defined in that the "the handle at the pressing area moves about 0.9 to 1 inch inclusive toward the base as the handle moves from the rest position to the pre-release position." ('709 Patent Claims 24, 28.) As argued by Staples, there are two ways the distance could be measured. (Staples Mem. at 18 (noting measurement "along an axis perpendicular to the base" or "as a straight line" traveled by a particular point.) Because "a patentee need not define his invention with mathematical precision," *Oakley,* 316 F.3d at 1342, the Court does not view the availability of two forms of measurement as fatal. Rather, the Court defines the "pressing area" as:

the surface area on the handle which moves about 0.9 to 1 inch toward the base as the handle moves from the rest position to the pre-release position, measured by whichever creates a smaller area of (a.) the distance traveled along an axis perpendicular to the base or (b.) the straight line distance traveled by a point between the two positions.

See e.g. Oakley, 316 F.3d at 1341 ("Thus, while the specification does not indicate so explicitly, the dividing line must be somewhere between 2.3% and 5.45%."). This construction comports with the regular meaning of the words used and the limitations provided in the claims.

D. "WHEREIN THE HANDLE AT THE PRESSING AREA MOVES ABOUT 0.9 TO 1 INCH INCLUSIVE TOWARD THE BASE AS THE HANDLE MOVES FROM THE REST POSITION TO THE PRE-RELEASE POSITION."

This language is in Claim 24 and Claim 28. In both, the full phrase is the same. ('709 Patent, Claims 24, 28.) Accentra states that the language is clear on it face, but if required, would construe "about 0.9 to 1 inch

inclusive" as:

including approximately 0.9 inch and approximately 1 inch, as well as the range between them.

(Accentra Mem. at 21.) Staples argues that the phrase is indefinite because "it is not clear how, where, or when the recited measurement is to be taken" and the range is undefined with use of the term "about." (Staples Mem. at 17, 19.) FN17

FN17. Staples also argues indefiniteness because the phrase relies on the allegedly indefinite terms "pressing area" and "pre-release position." (Staples Mem. at 17-18.) As noted above, however, the Court does not find these terms indefinite.

As to the measurement, Staples makes the same argument noted in the discussion of "pressing area" with the additional claim that the limitation fails to identify how many sheets of paper are in the stapler when the measurement is taken. (Staples Reply at 18-19.) The Court does not find these arguments persuasive. Simply because there are two possible ways to make the noted measurements does not mean the claim is indefinite-the claim is constrained by the area that falls within the noted measurement. The Court declines to address how the addition of paper alters any calculations as paper is not mentioned in either Claims 24 or 28. Again, the precision Staples seeks is not required. *Oakley,* 316 F.3d at 1341.

As to the term "about," Staples argues that it conflicts with the use of "inclusive." (Staples Mem. at 19 (" 'about' allows slight deviations from the recited range" while " 'inclusive' signals that the recited endpoints constitute the outermost boundaries.").) However, a claim with a definite qualifier establishing a bright line coupled with an indefinite qualifier is not automatically indefinite. *See* Minnesota Mining and Manufacturing Co. v. Beautone Specialties, Co., 117 F.Supp.2d 72, 88 (" *3M* ")(D.Mass.1999) (affirming construction of term "at least about" even though "words 'at least' establish a lower limit to the tension value ... while the term 'about' suggests that there is some degree of flexibility in that lower limit, but does not resolve the extent of that flexibility").

"About" in light of the term "inclusive" does not open the door for large variances, but only allows for deviations inherent in the measuring or manufacturing process.FN18 *See* 3M 117 F.Supp.2d at 88 (allow a variance of "0.20" where "the standard procedure for measuring interfacial tension specified in the specification is accurate to within two tenths ((plus-or-minus sign) 0.2) of a dyne per centimeter"). Accordingly, the claim does not suffer from indefiniteness. Given Accentra's position that no construction is necessary, the Court will go no further in addressing the language at issue.

FN18. "Inclusive" in this context means "Including the specified extremes or limits as well as the area between them." (Juo Decl., Ex. G (Am. Heritage Dict.).)

E. "ABOUT ONE HALF INCH" AND "ABOUT DOUBLE"

The limitation "about one half inch" is used in Claim 25; "about double" is used in Claim 27. Staples again argues that use of the term "about" renders Accentra's limitations indefinite. The Court does not agree. As noted above, the term "about" is not fatal. *See* Modine Mfg. Co. v. U.S. Int'l Trade Comm'n, 75 F.3d 1545, 1554 (Fed.Cir.1996) ("Although it is rarely feasible to attach a precise limit to 'about,' the usage can usually

be understood in light of the technology embodied in the invention.") *overruled on other grounds by* Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 234 F.3d 558 (Fed.Cir.2000). Accordingly, the terms do not suffer from indefiniteness. No further discussion is necessary at this time.FN19

FN19. Accentra argues that no construction is necessary and directs the Court to the dictionary definitions. (Accentra Mem. at 22.)

G. "INCLUDING A HANDLE PRESSING DISTANCE DEFINED BY THE DISTANCE BETWEEN THE PRESSING AREA AT THE REST POSITION AND THE PRESSING AREA AT THE PRE-RELEASE POSITION"

This language appears in Claim 27. The specific terms at issue are: "handle pressing distance." Staples argues that "handle pressing distance" is indefinite. Staples regurgitates the same arguments that have already been rejected above. (Staples Mem. at 22-23.) Accordingly, the Court does not find "handle pressing distance" indefinite. No further discussion is necessary at this time.FN20

FN20. Accentra argues that no construction is necessary and relies on the specific claim language to understand the terms. (Accentra Mem. at 23.)

VII. CONCLUSION

The Court construes, or declines to construe, the disputed limitations as set forth above.

IT IS SO ORDERED.

C.D.Cal.,2008.
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